SLS 09RS-311 **ORIGINAL**

Regular Session, 2009

SENATE BILL NO. 91

BY SENATOR N. GAUTREAUX

TAX/ENERGY. Provides a transferable tax credit for income and corporation franchise taxes of 25% of the costs and expenses attributable to the construction or for the installation of certain qualified energy resources limited to $3.75 million per qualified energy resource. (gov sig)

AN ACT

To enact R.S. 47:6035, relative to tax credits for the individual or corporation income tax or corporation franchise tax; to provide a tax credit for certain qualified energy resource; to provide terms, conditions, and definitions; to provide for promulgation of rules and regulations; to provide an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6035 is hereby enacted to read as follows:

§6035. Qualified energy resource tax credit

A. For the purposes of this Section, the following terms shall have the following definitions:

(1) "Department" means the Louisiana Department of Revenue.

(2) "Eligible costs and expenses" means the depreciable and amortizable costs and expenses attributable to the construction or installation of a qualified energy resource located in this state.

(3) "Qualified energy resource" means a qualified energy resource as defined in 26 USC 45 of the Internal Revenue Code of 1986, as amended.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

B.(1) The owner of a qualified energy resource shall be allowed a credit against income and corporation franchise tax for the amount of eligible costs and expenses incurred by the owner of such qualified energy resource. The credit shall not exceed twenty-five percent of the eligible costs and expenses of the qualified energy resource. The total amount of credits earned with respect to a single qualified energy resource shall not exceed three million seven hundred fifty thousand dollars.

(2) The tax credit for eligible costs and expenses of a qualified energy resource shall be earned only in the year in which the qualified energy resource is placed in service.

C.(1) The credit shall be allowed against the income tax for the taxable period in which the credit is earned and against the franchise tax for the taxable period following the taxable period in which the credit is earned. Any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years. This credit may be used in addition to any federal tax credit for such purposes.

(2)(a) Any taxpayer may elect to transfer or sell the taxpayer's unused tax credits. A single transfer or sale may involve one or more transferees. The tax credits may only be transferred or sold twice.

(b) The transfer or sale of the credit does not extend the carry forward period of the credit.

(c) Transferors and transferees shall submit to the department in writing a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance with respect to a particular qualified energy resource prior to transfer, the credit identification number, if any, assigned by the department, the transferor's remaining tax credit balance with respect to a particular qualified energy resource after transfer, the federal and Louisiana tax identification numbers for both transferor and transferee, the date of

<u>transfer, the amount transferred, and any other information required by the department. Failure to comply with this notification provision will result in the disallowance of the tax credit until the parties are in full compliance.</u>

<u>D.(1) This credit shall be administered by the department. Prior to any taxpayer claiming or transferring a credit, the department shall issue a tax credit certificate providing for an amount of credits earned in connection with a qualified energy resource.</u>

<u>(2) In order to issue a tax credit certificate, the department shall, at a minimum, be provided all the following:</u>

<u>(a) An audited cost report issued by a certified public accountant licensed in this state itemizing and confirming the amount of eligible costs and expenses attributable to a qualified energy resource.</u>

<u>(b) Evidence that the qualified energy resource has been placed into service.</u>

<u>(3) In issuing the tax credit certificate, the department may rely, without independent investigation, upon the audited cost report.</u>

<u>E. The owner of a qualified energy resource shall not receive a credit authorized under R.S. 47:6030 for which the owner of such qualified energy resource has received a credit under this Section.</u>

<u>F. Credits may be claimed in accordance with the following:</u>

<u>(1) All entities taxed as corporations for Louisiana income or corporation franchise tax purposes shall claim any credit allowed under this Section on their corporation income and corporation franchise tax return.</u>

<u>(2) Individuals shall claim any credit allowed under this Section on their individual income tax return.</u>

<u>(3) Estates or trusts shall claim any credit allowed under this Section on their fiduciary income tax returns.</u>

<u>(4) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:</u>

(a) Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

(b) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(c) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(d) Credits earned by entities not taxed as corporations shall be allocated among some or all of the partners, members, or shareholders in any manner agreed to by such partners, members, or shareholders which can be without regard to such partners', members', or shareholders' ownership interest in such entity.

G. The department shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Section, including rules to facilitate the certification and transfer of credits.

Section 2. The provisions of this Act shall be applicable to costs and expenses incurred on or after January 1, 2009.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Proposed law provides that the owner of a qualified energy resource will be allowed a credit against income and corporation franchise tax of up to 25% of the amount of "eligible costs and expenses" incurred by the owner of a "qualified energy resource," provided that the credit earned with respect to a single qualified energy resource cannot exceed $3,750,000.

"Eligible costs and expenses" is defined as the depreciable and amortizable costs and expenses attributable to the construction or installation of a qualified energy resource located in this state.

"Qualified energy resource" means a qualified energy resource as defined in 26 USC 45 of the IRC, which in general is defined as the following energy resources which qualify for the renewable energy federal tax credit in that law:

1. Wind.
2. Closed-loop biomass, meaning any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.
3. Open-loop biomass, meaning any agricultural livestock waste nutrients or any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from certain forest or agricultural sources.
4. Geothermal energy.
5. Solar energy.
6. Small irrigation power, meaning power generated without any dam or impoundment of water through an irrigation system canal or ditch, and the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.
7. Municipal solid waste,
8. Qualified hydropower production from certain hydroelectric dams and "nonhydroelectric dams."
9. Marine and hydrokinetic renewable energy, meaning energy derived from waves, tides, and currents in oceans, estuaries, and tidal areas, free flowing water in rivers, lakes, and streams, free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or differentials in ocean temperature (ocean thermal energy conversion).

Proposed law provides that the tax credit is earned only in the year in which the qualified energy resource is placed in service.

Proposed law provides that the tax credit will be allowed against the income tax for the taxable period in which the credit is earned and against the franchise tax for the taxable period following the taxable period in which the credit is earned. Further provides that any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 5 years, and the credit may be used in addition to any federal tax credit.

Proposed law provides that any taxpayer may elect to transfer or sell their unused tax credits and the credits may be transferred or sold only twice. Further provides that a single transfer or sale may involve one or more transferees.

Proposed law provides that the transfer or sale of the credit does not extend the carry forward period of the credit.

Proposed law provides that the transferors and transferees must submit to the department in writing a notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. Further provides the information that must be included in the notification and that failure to provide such information will result in the disallowance of the tax credit until the parties provide the required information.

Proposed law requires prior to any taxpayer claiming or transferring a credit, the department must issue a tax credit certificate providing for an amount of credits earned in connection with a qualified energy resource. Further provides what information must be provided to the department in order to issue the certificate.

Proposed law provides that the owner of a qualified energy resource cannot receive a credit authorized under R.S. 47:6030 [the wind or solar energy systems tax credit] for which the owner of such qualified energy resource has received a credit under the proposed law.

Proposed law provides how the credits may be claimed by various taxpayers.

Proposed law requires the secretary of the DOR to promulgate such rules and regulations as may be necessary to carry out the provisions of proposed law.

Applicable to costs and expenses incurred on and after January 1, 2009.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6035)